

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LARRY J. LEE,

Petitioner,

V.

JASON BENNETT,

## Respondent.

CASE NO. 3:24-cv-05523-JNW-SKV

## ORDER

On February 14, 2025, the Court dismissed Petitioner Larry J. Lee's habeas petition without prejudice; after a de novo review, the Court adopted the Magistrate Judge's Report and Recommendation, finding that Lee incorrectly filed his Petition under 28 U.S.C. § 2241, rather than 28 U.S.C. § 2254. Dkt. Nos. 16, 17; *see also* Dkt. No. 13. Lee had two opportunities to cure his Petition before dismissal, but he failed to do so. Dkt. No. 18. The Ninth Circuit Court of Appeals has asked the Court to determine whether a certificate of appealability should issue. Dkt. No. 20.

A habeas petitioner must obtain a certificate of appealability to appeal the denial of a Rule 60(b) motion. *See United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015). “A certificate of appealability should only issue on a denial of a Rule

1 60(b) motion if '[1] jurists of reason would find it debatable whether the district  
2 court abused its discretion in denying the Rule 60(b) motion and [2] jurists of reason  
3 would find it debatable whether the underlying [habeas] motion states a valid claim  
4 of the denial of a constitutional right.'" *Dunsmore v. Harris*, Case No.: 13-cv-1193-  
5 GPC-PCL, 2022 WL 542541, at \*1 (S.D. Cal. Feb. 22, 2022) (quoting *Winkles*, 795  
6 F.3d at 1143)). As that standard is not met here, a certificate of appealability will  
7 not issue.

8 Dated this 21st day of April, 2025.

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10 Jamal N. Whitehead  
United States District Judge  
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